

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

KIT CARSON JOINT UNION SCHOOL
DISTRICT.

OAH CASE NO. 2013040174

ORDER GRANTING PARTIES'
REQUEST TO REPLACE THE
RESOLUTION SESSION WITH
MEDIATION BY OAH

On April 16, 2013, prior to beginning mediation, the parties submitted a signed stipulation asserting that the parties had mutually waived the resolution session and the 30-day resolution period associated with the request for due process filed by Student.¹ They also agreed to new dates for the unexpedited portion of the case, thus agreeing to a continuance.

APPLICABLE LAW, DISCUSSION AND ORDER

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) However, prior to the commencement of the 45-day time line for the due process hearing and written decision to be rendered, the local education agency (LEA) shall convene a resolution session within 15 days of receiving the notice of due process hearing request. (Ed. Code, § 56501.5, subd. (a)(1).) If the LEA fails to resolve the due process hearing issue to the satisfaction of the parents within 30 days of the receipt of the due process hearing request notice, the 45-day time line to conduct a due process hearing and issue a written decision shall commence. (Ed. Code, § 56501.5, subd. (c).) The 45-day time line may be accelerated if the parties agree in writing to waive the resolution meeting or if the LEA fails to timely convene the resolution session and the parents request that the 45-day time line commence. (Ed. Code, § 56501.5, subd. (d)(1) and (e)(2).)

¹The parties simultaneously filed a stipulation to dismiss any issues from the complaint that caused this matter to be treated as in an expedited manner pursuant to sections 300.530, 300.532, and 300.536 of the Code of Federal regulations. These provisions call for a shortened decision timeline when a student has, or is suspected to have, a disability that qualifies him for special education, has been disciplined for violating a school's code of conduct, and is threatened with suspension or expulsion. This request is being treated by OAH as a request to unexpedite the case, and will be ruled upon separately.

The stipulation of the parties essentially asks that the mediation session be used by the parties to attempt to resolve their dispute rather than holding a resolution session. While the document states that the parties are “waiving” the 30-day resolution period, because the parties have not asked to accelerate the 45-day time line for a due process hearing their statement is taken as a reference to using mediation in lieu of the resolution session.

Therefore, the April 16, 2013, stipulation does not constitute a written waiver by the parties that would trigger the commencement of the 45-day time line to hold a due process hearing and issue a written decision. However, since the parties at mediation agreed to continue the unexpedited proceedings, the 45-day time line shall commence on the first day of the due process hearing.

IT IS SO ORDERED.

Dated: April 17, 2013

/s/

REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings